

AMENDED IN SENATE JUNE 7, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2021

Introduced by Assembly Member Wagner

February 23, 2012

An act to amend Section 7108.5 of the Business and Professions Code, and to amend Sections 8800, 8812, and 8814 of the Civil Code, relating to works of improvement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2021, as amended, Wagner. Works of improvement: disputed amounts.

Existing law contains various provisions relating to contracts for the performance of private works of improvement, including provisions for the withholding and disbursement of retention proceeds. Existing law provides that, with respect to those contracts for works of improvement, the retention proceeds withheld from any payment may not exceed 150% of the disputed amount.

This bill would increase the amount that may be withheld from progress payments or final payments, depending on the circumstances, to a sum of various amounts and percentages, as specified.

This bill would declare that it is the intent of the Legislature to overrule Martin Brothers Construction Inc. v. Thompson Pacific Construction Inc. (2009) 179 Cal.App.4th 1401 to the extent that it is inconsistent with these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 7108.5 of the Business and Professions Code is amended to read:

7108.5. (a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over the amount due on a progress payment, the prime contractor or subcontractor may withhold from the progress payment an amount not to exceed the sum of the following:

(1) The liquidated damages—~~owed by~~ *assessed against* the subcontractor.

(2) One hundred fifty percent of the estimated cost of repair or replacement of subcontract work that was not performed according to the subcontract.

(b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(c) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.

(d) This section applies to all private works of improvement and to all public works of improvement, except where Section 10262 of the Public Contract Code applies.

SEC. 2. Section 8800 of the Civil Code is amended to read:

8800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(b) If there is a good faith dispute between the owner and direct contractor as to a progress payment due, the owner may withhold

1 from the progress payment an amount not in excess of the sum of
2 both of the following:

3 (1) The liquidated damages—~~owed by~~ *assessed against* the
4 contractor.

5 (2) One hundred fifty percent of the estimated cost of repair or
6 replacement of contract work that was not performed according
7 to the contract.

8 (c) An owner that violates this section is liable to the direct
9 contractor for a penalty of 2 percent per month on the amount
10 wrongfully withheld, in place of any interest otherwise due. In an
11 action for collection of the amount wrongfully withheld, the
12 prevailing party is entitled to costs and a reasonable attorney's fee.

13 (d) This section does not supersede any requirement of Article
14 2 (commencing with Section 8810) relating to the withholding of
15 a retention.

16 SEC. 3. Section 8812 of the Civil Code is amended to read:

17 8812. (a) If an owner withholds a retention from a direct
18 contractor, the owner shall, within 45 days after completion of the
19 work of improvement, pay the retention to the contractor.

20 (b) If part of a work of improvement ultimately will become
21 the property of a public entity, the owner may condition payment
22 of a retention allocable to that part on acceptance of the part by
23 the public entity.

24 (c) If there is a good faith dispute between the owner and direct
25 contractor as to a retention payment due, the owner may withhold
26 from final payment an amount not in excess of the sum of all of
27 the following:

28 (1) The liquidated damages—~~owed by~~ *assessed against* the
29 contractor.

30 (2) The amounts that are withheld pursuant to Sections 8470
31 and 8522.

32 (3) One hundred fifty percent of the estimated cost of
33 uncompleted contract work, except for those costs that are withheld
34 under paragraph (2).

35 (4) One hundred fifty percent of the estimated cost to repair or
36 replace contract work that was not performed according to the
37 contract, except for those costs that are withheld under paragraph
38 (2) or (3).

39 SEC. 4. Section 8814 of the Civil Code is amended to read:

1 8814. (a) If a direct contractor has withheld a retention from
2 one or more subcontractors, the direct contractor shall, within 10
3 days after receiving all or part of a retention payment, pay to each
4 subcontractor from whom retention has been withheld that
5 subcontractor's share of the payment.

6 (b) If a retention received by the direct contractor is specifically
7 designated for a particular subcontractor, the direct contractor shall
8 pay the retention payment to the designated subcontractor, if
9 consistent with the terms of the subcontract.

10 (c) If a good faith dispute exists between the direct contractor
11 and a subcontractor, the direct contractor may withhold from the
12 retention to the subcontractor an amount not in excess of the sum
13 of all of the following:

14 (1) The liquidated damages—~~owed by~~ *assessed against* the
15 subcontractor.

16 (2) That portion of any mechanics lien or stop payment notice
17 claim by the subcontractor for which the subcontractor has already
18 been paid.

19 (3) The amount that would have been withheld by the owner
20 pursuant to Section 8470 or 8522, but for a bond provided by the
21 direct contractor pursuant to Section 8424 or 8510.

22 (4) One hundred fifty percent of the estimated cost of
23 uncompleted subcontract work, except for those costs that are
24 withheld under paragraph (2).

25 (5) One hundred fifty percent of the estimated cost to repair or
26 replace subcontract work that was not performed according to the
27 subcontract, except for those costs that are withheld under
28 paragraph (2) or (3).

29 *SEC. 5. It is the intent of the Legislature to overrule Martin*
30 *Brothers Construction Inc. v. Thompson Pacific Construction Inc.*
31 *(2009) 179 Cal.App.4th 1401 to the extent that it is inconsistent*
32 *with this act.*